IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

COMPANY PETITION NO.670 OF 2006

Visha Transport Company ..Petitioner.
Vs.
Vaithra Construction Pvt. Ltd. & Anr. ..Respondents.
....
Mr. Suresh Gole for the Petitioner.
Mr. G.S. Bhat for the Respondents.
...

CORAM: **DR. D.Y. CHANDRACHUD, J.**

4th April, 2007.

P.C. :

1. The claim in the Company Petition is on account of water supplied by the Petitioner to a construction project by the name of Rambha Towers at Ghatkopar (West), Mumbai 400 086. The claim is in the amount of Rs.2,36,900/-.

2. The First Respondent was acting as a developer in respect of the project in pursuance of an agreement dated 31st December, 2001 with the Second Respondent who is described therein as the contractor. In the affidavit in reply filed by the First Respondent, the

defence is that supplies were effected by the Petitioner to the Second Respondent who was the contractor and it was the contractor who is liable. According to the First Respondent, the contractor was not entitled to pledge the credit of the First Respondent, as would be evident both from the power of attorney annexed at Exh. B to the Petition and the agreement dated 31st December, 2001 between the First and Second Respondents. The contractor who constructed upon the property concerned has been impleaded as the Second Respondent in the company petition for winding up.

3. The agreement between the First and Second Respondents shows that in clause 1 that the contractor was to invest his own funds and to carry out the entire work of construction. Under clause 2, the agreed rate of construction at which the First Respondent was to pay the contractor was Rs.650/- per sq. ft. for the built up area for the rehabilitation building and Rs.900/- per sq. ft. for the built up area for the free sale building. The power of attorney that was executed by the First Respondent in favour of the Second Respondent (Ex. B to the Petition) prima facie does not entitle the Second Respondent to

pledge the credit of the First Respondent. The agreement between the First and Second Respondents stipulated that the Second Respondent would invest his funds for the project and the First Respondent would pay him at a consolidated rate per sq. foot as already noted above.

4. In these circumstances, the defence of the First Respondent cannot be adjudicated upon in a petition for winding up since it would clearly raise a disputed question of fact which would merit an adjudication in a suit for recovery of the alleged dues of the Petitioner. The Petition is accordingly dismissed leaving it open to the Petitioner to seek its remedies in a suit for the recovery of its dues.